question must be in the negative. Furthermore, it is clear that the powers of the arbitrator under Clause 34(3) are limited to opening up, reviewing or revising any opinion or decision of the architect and the arbitrator is given no power under that clause to open up a valuation given by a third party as a result of a separate contract between the parties in which they have expressly agreed that the valuation shall be final and binding on them.

Accordingly, the appellants succeed in their appeal on questions A1, A2 and A3 and we reserve the question of costs until the hearing and determination of the appeal on the remaining questions.

Appeal allowed.

Solicitors: *Shook Lin & Bok; Donaldson & Burkinshaw.*

GALSTAUN & ANOR. v. ATTORNEY-GENERAL*

[O.C.J. (Chua J.) July 11, 1980]
[Singapore — Suit No. 1931 of 1978]

Land Acquisition — Compulsory acquisition of land for public purpose — Claim that acquisition in relation to apparent and actual access of plaintiffs' land ultra vires and illegal — Land Acquisition Act (Cap. 272), s. 5(1).

The plaintiffs in this case were the owners of the land known as No. 27 Tomlinson Road, Singapore. The said land was acquired for a public purpose viz. for Orchard Boulevard Extension. The plaintiffs claimed that Orchard Boulevard having been constructed, the Collector of Land Revenue had acquired the plaintiffs' land in excess of that required for Orchard Boulevard. The excess which amounts to 2044 sq. metres abuts and has a frontage to Orchard Boulevard. The plaintiffs averred that the taking of the whole of their land in excess of that apparently required for Orchard Boulevard was an abuse of the statutory powers conferred by the Land Acquisition Act and was *ultra vires* and illegal.

The road lines of the Orchard Boulevard Extension cut right across a substantial portion of the plaintiffs' land and a large part of the house also fell within the road lines. There was a need to maintain an embankment for both sides of Orchard Boulevard having regard to the physical condition of the land. The Collector of Land Revenue conceded that an area of 1539.5 sq. metre of the plaintiffs' land is at present maintained as an open space with plants and trees.

Held, dismissing the plaintiffs' action: (1) the government is the proper authority for deciding what a public purpose is. When the government declares that a certain purpose is a public purpose it must be presumed that the government is in possession of facts which induce the government to declare that the purpose is a public purpose;

(2) in this case there is no dispute that the Orchard Boulevard is a public purpose and there is no evidence that the power was exercised for any other purpose; there is no suggestion that there were *mala fides* on the part of the government.

Cases referred to:-

(1) *Wijeyesekera* v. *Festing* [1919] A.C. 646.

(2) *Syed Omar Alsagoff & Anor.* v. *State of Johore* [1979] 1 M.L.J. 49.

CIVIL SUIT.

K.E. Hilborne for the plaintiffs.

Chao Hick Tin (Senior State Counsel) for the defendant.

Cur. Adv. Vult.

Chua J.: The plaintiffs in this case were the owners of the land and hereditaments comprised in Lots 366 and 367 of Town Subdivision XXIV containing 4,259 square metres and known as No. 27 Tomlinson Road, Singapore (the plaintiffs' land). The plaintiffs lived and carried on business at No. 27 Tomlinson Road.

Pursuant to a Declaration No. 3446 made under section 5 of the Land Acquisition Act (Chapter 272) (the Act) dated November 1, 1975, and published in the *Government Gazette* No. 101 of November 8, 1975, the plaintiffs' land was acquired for a public purpose viz. for Orchard Boulevard Extension.

The plaintiffs aver that Orchard Boulevard having been constructed, the Collector of Land Revenue did actually and in fact acquire land belonging to the plaintiffs in excess of that required for Orchard Boulevard and the said stated public purpose and that such excess amounts to 2,044 square metres being land which abuts and has a frontage in Orchard Boulevard. The plaintiffs aver that the taking of the whole of their land in excess of that apparently required for Orchard Boulevard was an abuse of the statutory powers conferred by the Act in pursuance whereof the Collector of Land Revenue purported to act and they further say that such apparent excess was not land properly acquired or capable of being properly acquired as part of the said stated public purpose.

The plaintiffs now seek, *inter alia,* a declaration that the purported compulsory acquisition in relation to the apparent and actual excess of the plaintiffs' land is *ultra vires* and illegal.

The road lines of the Orchard Boulevard Extension cut right across a substantial portion of the plaintiffs' land and a large part of the house also fell within the road lines. There was a need to maintain an embankment for both sides of the Orchard Boulevard having regard to the physical condition of the land. The Collector of Land Revenue concedes that an area of 1,539.5 square metres of the plaintiffs' land is at present maintained as an open space with plants and trees.

Section 5(1) of the Act in pursuant of which the Declaration No. 3446 was made provides that

"Whenever any particular land is needed (a) for any public purpose; . . . the President may, by notification published in the *Gazette,* declare the land to be required for the purpose specified in the notification."

And section 5(3) provides that "the declaration shall be conclusive evidence that the land is needed for the purpose specified therein as provided in subsection (1) of this section."

Counsel for the plaintiffs submits that the Government cannot take more land than is needed for the specified public purpose and that it is clear in the present case some part of the plaintiffs' land has been acquired not for the specified public purpose viz. Orchard Boulevard Extension. A number of English, Australian, New Zealand and Canadian cases were cited by counsel in support of his contention. These cases, however, do not assist the plaintiffs in the present case. They dealt with acquisitions by Local Authorities exercising limited statutory powers and

* On appeal to the Court of Appeal: See Civil Appeal No. 59 of 1980.

there was no conclusive section like our section 5(3) in the Acts under which they acted. Furthermore these cases dealt with a situation where the Local Authorities acquired excess land for resale.

The Government is the proper authority for deciding what a public purpose is. When the Government declares that a certain purpose is a public purpose it must be presumed that the Government is in possession of facts which induce the Government to declare that the purpose is a public purpose.

In *Wijeyesekera* v. *Festing*,[1] their Lordships of the Privy Council observed that the decision of the Governor of Ceylon on the question whether land was needed or not for public purpose was final even though in the Land Acquisition Ordinance of Ceylon there was no conclusive section corresponding to our section 5(3) of the Act.

In *Syed Omar Alsagoff & Anor.* v. *State of Johore*[2] the appellants' lands were compulsorily acquired by the Government of Johore. Section 3 of the Land Acquisition Act, 1960, specifies the purpose for which the State Authority may compulsorily acquire lands. It says:

"The State Authority may acquire any land which is needed

(a) for any public purpose; or

(b) by any person or corporation undertaking a work which in the opinion of the State Authority is of public utility, or

(c) for the purpose of mining or for residential, agricultural, commercial or industrial purposes."

And by virtue of section 7 where lands are needed for any of those purposes, the Collector is required to prepare and submit to the State Authority

"a plan of the whole area of such lands, showing the particular lands, or parts thereof, which it will be necessary to acquire;" and

a list of such lands in a prescribed form.

Pursuant to section 8 a Declaration in the prescribed form was published in the *Gazette* declaring that the appellants' lands and areas were needed for the construction of harbour, housing and industry and that a plan of such lands and areas may be inspected in the Land Office of the District in which such lands and areas were situated.

Section 8 provides as follows:

"8. (1) When the State Authority decides that any of the lands referred to in section 7 are needed for any of the purposes referred to in section 3, a declaration in Form D shall be published in the *Gazette*.

(2) A copy of the list of lands referred to in paragraph (b) of section 7, amended, if necessary, in accordance with the decision of the State Authority, shall be included as a schedule to the declaration in Form D.

(3) A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purposes specified therein."

The appellants' application to the High Court for a declaration that the acquisition proceedings in respect of their lands were illegal and therefore null and void was dismissed. The appellants appealed to the Federal Court. The appeal was dismissed. The Federal Court held that the declaration issued under section 8 of the Land Acquisition Act in this case was conclusive evidence that the lands referred to therein were needed for the purpose specified therein and therefore there was no merit in the contention that the acquisition proceedings were null and void.

Both in the High Court and in the Federal Court the appellants contended that the Government was acquiring the lands in bad faith as it was acquiring lands far in excess of the need for the purposes mentioned in the Declaration as the total area required was only 2,000 acres whereas almost 6,000 acres were acquired. Both the High Court and the Federal Court rejected this contention.

The appellants then appealed to the Privy Council. Viscount Dilhorne (delivering the judgment of the Board) said (at page 50):

"Section 8(3), as has been said, provides that the Declaration shall be conclusive evidence that all the scheduled land is needed for the purpose specified therein. While it may be possible to treat a Declaration made pursuant to this subsection as a nullity if it be shown that the acquiring authority has misconstrued its statutory powers (see *Anisminic* v. *Foreign Compensation Commission*) or that the purpose stated in the Declaration does not come within section 3, in the absence of bad faith, which in the instant case is negatived by concurrent findings of fact in the courts below, this subsection renders it not possible to challenge its validity by asserting that some of the land to which it relates is not needed for the purposes stated or that the land is in fact wanted for purposes other than those specified. Consequently the fact that the lands listed in the Schedule amounted to some 5,700 acres when the total area of the State Development Officer's original requirements was 2000 acres does not help the appellants, nor can it really be contended that the purposes stated in the Declaration do not come within section 3.

In their Lordships' opinion the Federal Court and Syed Othman J. came to the right conclusion and they will advise His Majesty the Yang di-Pertuan Agong that this appeal should be dismissed with costs."

In the present case there is no dispute that the Orchard Boulevard is a public purpose and there is no evidence that the power was exercised for any other purpose. There is no suggestion that there were *mala fides* on the part of the Government.

It appears to me that the law is clearly on the side of the Government and I would therefore dismiss this action.

The plaintiffs' action is dismissed with costs.

Claim dismissed.

Solicitors: *Hilborne & Co.*